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No. 80-2011

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DANIEL A. BUBLICH,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

The petitioner has raised no issue of such stature as to warrant review by this Court.

The petitioner asserts that his trial counsel was incompetent in failing to present evidence adequate to establish a defense of insanity. Alternatively, petitioner asserts that the evidence presented did create a reasonable doubt of sanity at the time of the offense which was never rebutted by the State. Finally, petitioner claims that certain evidence was improperly received at his sentencing hearing.

I.

PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

The first of these claims, that trial counsel was inadequate, was not raised before the Illinois Appellate Court. The basis for this claim appears to be that in not presenting evidence sufficient to raise a defense of insanity, counsel failed to provide the petitioner the appropriate quality of legal assistance. It is alleged that counsel failed to ascertain the results of neurology tests made on petitioner following a head injury he suffered at age 12; that he failed to ascertain the findings of psychiatrists the petitioner had seen following the injury; that he failed to elicit testimony from persons close to petitioner at the time of the crime as to his sanity; and that he failed to elicit testimony from the psychiatrists who made the determination of trial competency as to sanity at the time of the crime. (Pet. Br. pp. 9-10)

It is essential to a meritorious claim of ineffective assistance of counsel that there be some basis for alleging prejudice to the defendant as a result of counsel's shortcomings. *United States* v. *Bad Cob,* 560 F. 2d 877 (8th Cir. 1977); *Bush* v. *United States,* 393 F. 2d 478 (10th Cir. 1968). Here, the record contains no indication that the evidence which was not presented might have been favorable to petitioner. Furthermore, the argument that trial counsel was ineffective because he failed to pursue a particular line of evidence, or failed to call certain witnesses, is not favored by the courts because it involves speculation as to what that evidence might have shown. *Buckelew* v. *United States,* 575 F. 2d 515 (5th Cir. 1978); *United States* v. *Doran,* 564 F. 2d 1176 (5th Cir. 1977), *cert. den.* 435 U. S. 928 (1978). Petitioner asks this Court to speculate, first, that evidence regarding his sanity at the time of the offense existed; second, that trial counsel either failed to

discover it or ignored it;* and third, that the evidence would have been beneficial to his defense. In other words, petitioner has informed this Court that a psychiatric history exists but was not presented in evidence, and asks the Court to speculate upon its substance.

II.

THE EVIDENCE PRESENTED BY PETITIONER WAS NOT SUFFICIENT TO RAISE A REASONABLE DOUBT AS TO HIS SANITY AT THE TIME OF THE OFFENSE.

The Appellate Court properly concluded that the petitioner's evidence failed to raise a bona fide doubt of insanity at the time of the offense. In seeking a review by this Court, petitioner relies on the finding below that he suffered from a mental condition which was present as early as 1970, and which was the basis for the finding that he was incompetent to stand trial. From this, petitioner asserts that it is reasonable to infer that he was unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. (See Ill. Rev. Stat. ch. 38, Sec. 6-2) This argument falls far short of the mark. Firstly, the issues of insanity at the time of the offense and competency to stand trial are wholly separate and distinct. *Jackson* v. *Indiana,* 406 U. S. 715 (1972). Compare *Drope* v. *Missouri,* 420 U. S. 162 (1975) and Ill. Rev. Stat., ch. 38, Sec. 6-2. Furthermore, the presence of some degree of mental illness is not necessarily dispositive of either issue. *Hall* v. *United States,* 410 F. 2d 653 (4th Cir. 1969). The trial court's finding that petitioner had not raised a reasonable doubt as to his sanity at the time of the offense is a finding of fact which, as the Appellate Court appropriately ruled, should not be disturbed on review. *Glasser* v. *United States,* 315 U. S. 827 (1942).

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* Petitioner alleges that trial counsel failed to ascertain the results of earlier neurology tests and psychiatric examinations. (Pet. Br. p. 10) There is no support for this in the record. Petitioner relies solely on the fact that the evidence was not produced, discounting entirely the possibility that the evidence was discovered and found to be unfavorable.

III.

THE SENTENCING PROCEDURES FOLLOWED IN THIS CASE PRESENTED NO CONSTITUTIONAL VIOLATION

Similarly, the Appellate Court properly found that the trial court was not improperly influenced by its reception at the sentencing hearing of evidence which was the subject matter of a then pending indictment. Trial counsel conceded that the conduct was the basis of a pending charge, and the trial court indicated that it would give the evidence "only its appropriate weight." From the record it is clear that the trial court fully understood the nature of this evidence—that it was simply a pending indictment and not a conviction. The charge was subsequently dismissed by the prosecution because the evidence had been presented in aggravation at this sentencing. The cases cited by petitioner in his brief, as well as the A.B.A. Minimum Standards concerning sentencing alternatives (See pet.'s brief, p. 16) recognize the many benefits to a criminal defendant afforded by this kind of combined disposition. The Petitioner's consent to this disposition of the charge is not required.

CONCLUSION

For the foregoing reasons, the respondent requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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